

**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I.(a) PLAINTIFF**

Great-West Life &amp; Annuity Insurance Company

(b) ~~ORIGINAL~~ COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Arapahoe, CO  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Thomas H. Lawrence  
LAWRENCE & RUSSELL  
5050 Poplar Ave., Suite 1617  
Memphis, TN 38157  
901-844-4430

**II. BASIS OF JURISDICTION**

(PLACE AN "X" IN ONE BOX ONLY)

1 U.S. Government Plaintiff

3 Federal Question  
(U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity  
(Indicate Citizenship of Parties in Item III)

CLERK U.S. DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

ATTORNEYS (IF KNOWN)

Hardin Ramey  
Blakeley & Ramey  
12225 Greenville Avenue, Ste. 880  
Dallas, Texas 75243

APR 10 2002

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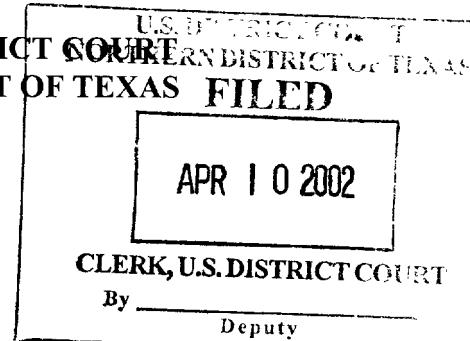
*ORIGINAL*  
GREAT-WEST LIFE & ANNUITY  
INSURANCE COMPANY,

Plaintiff,

v.

DONALD MILLER, HARDIN RAMEY,  
and BLAKELEY & RAMEY,

Defendants.



Case No. 3:02-cv-00731-L

### COMPLAINT

Plaintiff, Great-West Life & Annuity Insurance Company, pleads as follows:

1. This action to enforce the terms of the Employee Welfare Benefit Plan for Employees and Dependents of Baron & Budd (the "Plan") and for equitable relief arises under the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001-1461 ("ERISA").

### PARTIES

2. Plaintiff has been assigned all of the Plan's rights to enforce the Plan's Subrogation and Right of Recovery Provision, is a fiduciary of the Plan and, thus, is authorized to bring this action pursuant to 29 U.S.C. § 1132(a)(3).

3. Defendant, Donald Miller ("Miller"), is a citizen and resident of this District.

4. Upon information and belief, Defendant Hardin Ramey is a citizen and resident of Dallas, Texas.

5. Upon information and belief, Defendant Blakeley & Ramey is conducting business in Dallas, Texas.

**JURISDICTION AND VENUE**

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 because this action to enforce provisions of the Plan arises under ERISA.

7. Pursuant to 29 U.S.C. §1132(e)(2), venue is proper in this Court because Defendant resides in this District and because the breach of Plan provisions has occurred and is occurring in this District.

**FACTUAL ALLEGATIONS**

8. Miller is an employee of Baron & Budd. He elected to participate in the Plan for purposes of obtaining medical, surgical and hospital benefits.

9. On or about June 4, 2001, Miller was injured in a motor vehicle accident.

10. Miller retained Hardin Ramey to represent him in pursing claims against the third parties responsible for his injuries.

11. In connection with the same injuries alleged in those claims, the Plan has paid medical benefits on behalf of Miller in the amount of \$30,748.53.

12. The Plan contains an express provision for subrogation and right of reimbursement, which provides for a first lien right of recovery, to the extent of benefits paid, when a covered person makes a recovery from another party responsible for the injuries.

13. Miller has settled his claims for a total amount of \$500,000.00. Plaintiff has requested that Miller honor the terms of the Plan, but he has refused to do so.

**I. EQUITABLE RELIEF ENFORCING THE TERMS OF THE PLAN**

14. Pursuant to 29 U.S.C. § 1132(a)(3), Plaintiff seeks equitable relief against Defendants to enforce ERISA and the terms of the Plan. By refusing to turn over the \$30,748.53

recovery to Plaintiff, Defendants have violated the terms of the Plan. Since these acts and/or practices violate the Plan's terms, this Court should enter an order declaring the Plaintiff's rights, and an order in constructive trust and equitable restitution enforcing the terms of the Plan by requiring Defendants to turn over \$30,748.53 out of the \$500,000.00 recovered on behalf of Miller.

**II. PRAYER FOR RELIEF**

15. Plaintiff requests that the Court enter an order granting it a constructive trust and equitable restitution against Defendants requiring them to turn over \$30,748.53 to the Plan, including appropriate pre-judgment interest and post-judgment interest at the rate of 1 ½ % pursuant to the terms of the Plan, and for any other relief to which it is entitled and that it be awarded its reasonable attorneys' fees and costs.

Dated this 9 day of April, 2002.

Respectfully submitted,

By: 

Thomas H. Lawrence  
Attorney-in-Charge for Defendant  
Federal I.D. No. 22802  
State Bar of Texas No. 00787884  
John M. Russell  
TN Bar No. 17546

OF COUNSEL:

LAWRENCE & RUSSELL, LLP  
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